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No. 01-1215

Supreme Court, U.S.
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In the Supreme Court of the United States

Brian Burgeson, John Dorner, Brian Foster, Maury Gantman, Raymond Greve, Kelly Jackson, Richard Kim, Laura Loken, Moira Weyrich, Jose Mendez, Timothy McPhillips, Edward Pickell, Edward Plucinski, Maurice Smith, Jeffrey Sulkin, George Velisaris, Mike Wish and Michelle Zimmerman, in their individual capacities,

Petitioners,

v.

Marcella Richman, individually and as Special Administrator of the Estate of Jack B. Richman, deceased,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Petitioners submit this reply brief in support of their petition for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit in *Richman v. Sheahan*, 270 F.3d 430 (7th Cir. 2001). A reply brief is warranted because respondent has overlooked and understated the true breadth of the conflict between the circuits.

I. A CONFLICT EXISTS BETWEEN THREE CIRCUITS REGARDING THE ISSUE OF WHETHER COURTROOM SECURITY PERSONNEL ARE ENTITLED TO QUASI-JUDICIAL ABSOLUTE IMMUNITY FROM SUIT WHEN ENFORCING A JUDICIAL ORDER IN THE COURTROOM.

Respondent concedes that a conflict exists between the Seventh and Eighth Circuits regarding the scope of immunity afforded to bailiffs enforcing a lawful judicial order in the courtroom. *See* Respondent's Brief in Opposition at 8-11. Respondent, however, contends that decisions from the Tenth Circuit support the majority opinion in *Richman*. Respondent overlooks the rationale of the Tenth Circuit's decision in *Valdez v. City of Denver*, 878 F.2d 1285 (10th Cir. 1989) and erroneously relies on the Tenth Circuit's decision in *Martin v. Board of County Commissioners*, 909 F.2d 402 (10th Cir. 1990), an inapposite case that involves the execution of an arrest warrant *outside* the courtroom.

Unlike respondent, Judge Bauer saw the true breadth of the conflict between *Richman* and the other circuits. As he observes, "the tenth circuit case [*Martin v. Board of County Commissioners*] involved police conduct in serving a bench warrant; the eighth circuit case is vir-

tually on all fours with the instant case." *Richman*, 270 F.3d at 443 (Bauer, J., dissenting). *Martin v. Board of County Commissioners* did not consider the scope of immunity afforded to a bailiff enforcing a judge's order in the courtroom and, thus, has no bearing on the instant case.

In *Valdez*, the Tenth Circuit held that a courtroom bailiff had absolute immunity from false arrest and false imprisonment claims brought under the Fourth Amendment for the execution of a contempt order within the courtroom. The rationale of *Valdez* cannot be reconciled with the majority decision in *Richman*.

Respondent concedes that the plaintiffs in *Valdez* challenged the trial judge's contempt order through collateral civil litigation. *See* Respondent's Brief in Opposition at 9 n. 4. Respondent also acknowledges that under this Court's decision in *Mireles v. Waco*, 502 U.S. 9 (1991), the doctrine of absolute immunity precludes a litigant from collaterally attacking an alleged order to use excessive force to seize the litigant and bring him to court. *See* Respondent's Brief in Opposition at 12. Respondent, however, argues that *Valdez* and *Mireles* are distinguishable from the instant case because she challenges the conduct of courtroom security personnel enforcing a judge's order in the courtroom, but not the order itself. This argument begs the question.

Respondent acknowledges that litigants cannot bring a collateral civil lawsuit to challenge a contempt order. Yet, under the rationale of *Richman*, litigants could bring such a collateral civil lawsuit so long as they allege excessive force in the execution of the contempt order. As the Eighth Circuit observed:

> Absolute quasi-judicial immunity would afford only illusory protection if it were lost the moment an officer acted improperly.

Martin v. Hendren, 127 F.3d 720, 722 (8th Cir. 1997).

The majority in *Richman* acknowledged that courtroom bailiffs act as an arm of the court when they enforce a judge's orders. *Richman*, 270 F.3d at 441-442. Under the Eighth Circuit's decision in *Martin v. Hendren* and the rationale of both the Tenth Circuit's decision in *Valdez* and this Court's decision in *Mireles*, a courtroom bailiff is absolutely immune from suit when enforcing a judicial order in the judge's presence within the courtroom. The decision of the Seventh Circuit in *Richman* is contrary.

The Court should grant this petition in order to resolve this very serious conflict.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, the petition should be granted.

Respectfully submitted,

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